YALE LAW JOURNAL

SUBSCRIPTION PRICE, $2.50 A YEAR. SINGLE COPIES, 35 CENTS

Published monthly during the Academic year, by students of the Yale Law School.
P. O. Address, Box 1341, New Haven, Conn.

If a subscriber wishes his copy of the JOURNAL discontinued at the expiration of his subscription, notice to that effect should be sent; otherwise it is assumed that a continuance of the subscription is desired.

THE unreliability and general inaccuracy of newspaper reports of decisions of law by trial courts is familiar to every practicing lawyer, and due allowance is customarily made therefor by members of the profession. The public, however, are constantly thus misled, and such erroneous reports do more than any other one thing to arouse unjust and unnecessary criticism of the bench.

A recent issue of the Chicago *Law Journal* contains an editorial, obviously based upon such newspaper reports, which reflects seriously on the integrity of the bench of Connecticut and of California. The statements therein contained were so unreasonable that we were led to investigate and determine the true decision in each of the cases referred to in the editorial, for the purpose of determining the basis of fact for the statements made. As we had anticipated, the decision in one case was decided directly contrary to the way in which it was reported to have been decided, and in the other case was in no respect whatever as reported.

As to the Connecticut case, the statement is that the Court recently awarded only ten dollars damages for the death of a railway workman, who was killed by the negligence of the railway's agents. Investigation proved that the decision of the Court was based on the finding that the Railroad Company was not negligent.

The ten dollars nominal damages were awarded solely on account of the default which the defendant had previously suffered to be entered, and entirely independent, therefore, of the

question whether or not the defendant was negligent. If the defendant had been found to be guilty of negligence substantial damages would have been awarded in addition thereto.

As to the California case, it is reported that the Court held that the life of a workingman's child is only reasonably worth five dollars. An examination of the report of the case shows that it was an action by the father to recover damages from a street railway company resulting from the death of his infant son (three and a half years of age), alleged to have been caused by the negligence of the defendant. It was not a suit by the father in the capacity of administrator, but simply in the capacity of parent, in which case he was entitled to recover the reasonable value of the child's services during the period of minority, taking into consideration the support and maintenance of the child during the early and helpless part of its life. The trial court charged that nothing could be awarded to the parents by way of penalty for the child's death, nor for their sorrow and grief. This was held proper, and no reference whatever was made to the pecuniary condition of the parents. The portion of the charge excepted to was that the question of the parent's negligence in a given case might be made to turn upon the state of his finances. The Supreme Court held that such instruction was erroneous, and that in such case the question of the parent's finances was immaterial; thus, in so far as any question of the parent's finances did arise, holding that they were not to be considered.

Such misstatements are inexcusable in a paper which pretends to be confined to legal news, and which is intended to circulate among lawyers for their better information and instruction. Fortunately they do little harm, in view of the fact that they circulate only among members of the profession, who, presumably, are able to judge of their probable truth, either from actual experience in practice, or from a knowledge of the general unreliability of the source from which the statements emanate.

* * * *

One of the most interesting and enjoyable events in the annals of the Yale Law School was the occasion of a series of informal addresses on the Constitution of the United States, delivered during the past month by Mr. Justice Harlan, Associate Justice of the United States Supreme Court.

Among the many questions dwelt upon was that in regard to the rights of the inhabitants of our recent acquisitions under

our Constitution. In discussing this question reference was had to the cases of Callan vs. Wilson, 127 U. S. 540, and Thompson vs. Utah, 170 U. S. 345. The Callan vs. Wilson case was particularly emphasized. It declared the right of a citizen of the District of Columbia to invoke the provisions of the Constitution with reference to trial by jury. In Thompson vs. Utah a somewhat similar question presented itself. The Constitution of the State of Utah provided for trial by a jury of eight men. The Supreme Court held such provision to be an *ex post facto* law as regards a citizen who had committed crime in Utah while still a territory, and therefore unconstitutional.

Mr. Justice Harlan, in alluding to these decisions, called attention to the point that when the rights of the inhabitants of our new acquisitions are considered, we find ourselves confronted with new questions, by reason of the fact that the territory is not as yet organized under a civil government, and also that it is not contiguous to any organized territory or state.

While the President is in possession and control as a military commander, his will would be, in general, the law. But how will it be should Congress legislate in such a way as to establish a regularly organized civil government in Porto Rico or the Philippines? Will the natives then be entitled to claim the privilege of a jury trial and the writ of *habeas corpus?*

These questions were stated without being answered, but in a way which showed the speaker's sense of their high importance. He alluded to another point of particular interest, and one that has received little attention. It is that our Constitution fails to provide a means by which a state can be held to the obligations assumed as a condition precedent to admission to statehood. A striking illustration is found in the case of Utah. A condition to admission to statehood was that polygamy should forever be abolished. Should Utah sanction a breach of this condition, what remedy can be resorted to by the United States? No remedy is provided by the Constitution, and, in his view, perhaps the only means would be by an amendment to it.

* * * *

A MEASURE pending before the Connecticut Legislature proposes a remedy against pestiferous libel suits brought by irresponsible persons and never prosecuted. The chief sufferers from the evil have been the newspapers. Considerable expense is incurred every year by even the most reputable journals in

preparing to defend against actions for libel which are dropped before coming to trial. The bill in question simply requires that a person bringing a libel suit must file a bond of two hundred and fifty dollars to prosecute the same, and that the court may order an allowance of two hundred dollars for costs to the defendant if successful. The principle embodied is by no means a new one. In California, for example, in an action for libel or slander the clerk before issuing the summons must require a written undertaking on the part of the plaintiff in the sum of five hundred dollars, with sureties, to the effect that if the action be dismissed or the defendant recover judgment, they will pay all costs awarded up to the sum specified in the undertaking. Such a requirement offers no new latitude to the press, for it does not at all effect the law of libel. It imposes no real hardship on a plaintiff who sues in good faith to to require him to file a bond equal to a small proportion of the damages asked, conditioned only on his bringing the suit to trial. At the same time it offers a simple and probably efficient preventive against malicious suits brought in spite and bad faith.

* * * *

AT the regular annual meeting of the YALE LAW JOURNAL, held on June 23d, the following officers for the ensuing year were chosen: Nathan Ayer Smyth was elected Chairman, and Walter Dunham Makepeace was elected Business Manager.